



General Assembly

January Session, 2009

Governor's Bill No. 845

LCO No. 3050

03050_____

Referred to Committee on Public Health

Introduced by:

SEN. MCKINNEY, 28th Dist.

REP. CAFERO, 142nd Dist.

AN ACT CONCERNING OVERSIGHT OF NURSING HOMES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2009*) The Department of Public
2 Health shall include on the department's web site a direct link to the
3 United States Department of Health and Human Services' Nursing
4 Home Compare database as located on the United States Department
5 of Health and Human Services' official United States Government Site
6 for People with Medicare. Such direct link shall be located in a
7 prominent place on the department's web site.

8 Sec. 2. Section 17b-351 of the general statutes is amended by adding
9 subsection (c) as follows (*Effective July 1, 2009*):

10 (NEW) (c) On or before December 31, 2009, and annually thereafter,
11 the Commissioner of Social Services, in consultation with the
12 Commissioner of Public Health, shall, within available appropriations,
13 complete an inventory of all publicly funded and private pay nursing
14 home beds in the state. On or before January 1, 2010, and annually

15 thereafter, the Commissioner of Social Services shall report to the joint
16 standing committees of the General Assembly having cognizance of
17 matters relating to human services and public health on the results of
18 the inventory, in accordance with section 11-4a. The Commissioner of
19 Social Services shall identify in such report any geographic areas in the
20 state that are in need of additional nursing home beds and the number
21 of beds needed in such geographical areas. The Commissioner of
22 Social Services shall also identify in such report any geographic areas
23 of the state in which there is a surplus of nursing home beds.

24 Sec. 3. Section 17b-352 of the general statutes is repealed and the
25 following is substituted in lieu thereof (*Effective from passage*):

26 (a) For the purposes of this section and section 17b-353, "facility"
27 means a residential facility for the mentally retarded licensed pursuant
28 to section 17a-277 and certified to participate in the Title XIX Medicaid
29 program as an intermediate care facility for the mentally retarded, a
30 nursing home, rest home or residential care home, as defined in section
31 19a-490.

32 (b) Any facility [~~which~~] that intends to (1) transfer all or part of its
33 ownership or control; [~~prior to being initially licensed;~~] (2) introduce
34 any additional function or service into its program of care or expand
35 an existing function or service; or (3) terminate a service or decrease
36 substantially its total bed capacity, shall submit a complete request for
37 permission to implement such transfer, addition, expansion, increase,
38 termination or decrease with such information as the department
39 requires to the Department of Social Services, provided no permission
40 or request for permission to close a facility is required when a facility
41 in receivership is closed by order of the Superior Court pursuant to
42 section 19a-545. The Office of the Long-Term Care Ombudsman
43 pursuant to section 17b-400 shall be notified by the facility of any
44 proposed actions pursuant to this subsection at the same time the
45 request for permission is submitted to the department and when a
46 facility in receivership is closed by order of the Superior Court

47 pursuant to section 19a-545.

48 (c) An applicant, prior to submitting a certificate of need
49 application, shall request, in writing, application forms and
50 instructions from the department. The request shall include [:(1) The]
51 the name of the applicant or applicants [;(2)] and a statement
52 indicating whether the application is for: [(A)] (1) A transfer of
53 ownership or control, (2) a new, additional, expanded or replacement
54 facility, service or function, [(B)] (3) a termination or reduction in a
55 presently authorized service or bed capacity, or [(C)] (4) any new,
56 additional or terminated beds and their type. [;(3) the] Certificate of
57 need applications, other than those seeking transfer of ownership or
58 control, shall include: (A) The estimated capital cost; [(4)] (B) the town
59 where the project is or will be located; and [(5)] (C) a brief description
60 of the proposed project. Such request shall be deemed a letter of intent.
61 No certificate of need application shall be considered submitted to the
62 department unless a current letter of intent, specific to the proposal
63 and in accordance with the provisions of this subsection, has been on
64 file with the department for not less than ten business days. For
65 purposes of this subsection, "a current letter of intent" means a letter of
66 intent on file with the department for not more than one hundred
67 eighty days. A certificate of need application shall be deemed
68 withdrawn by the department, if a department completeness letter is
69 not responded to within one hundred eighty days. The Office of the
70 Long-Term Care Ombudsman shall be notified by the facility at the
71 same time as the letter of intent is submitted to the department.

72 (d) Any facility acting pursuant to subdivision (3) of subsection (b)
73 of this section shall provide written notice, at the same time it submits
74 its letter of intent, to all patients, guardians or conservators, if any, or
75 legally liable relatives or other responsible parties, if known, and shall
76 post such notice in a conspicuous location at the facility. The notice
77 shall state the following: [(A)] (1) The projected date the facility will be
78 submitting its certificate of need application, [(B)] (2) that only the
79 department has the authority to either grant, modify or deny the

80 application, [(C)] (3) that the department has up to ninety days to
81 grant, modify or deny the certificate of need application, [(D)] (4) a
82 brief description of the reason or reasons for submitting a request for
83 permission, [(E)] (5) that no patient shall be involuntarily transferred
84 or discharged within or from a facility pursuant to state and federal
85 law because of the filing of the certificate of need application, [(F)] (6)
86 that all patients have a right to appeal any proposed transfer or
87 discharge, and [(G)] (7) the name, mailing address and telephone
88 number of the Office of the Long-Term Care Ombudsman and local
89 legal aid office.

90 (e) The department shall review a request made pursuant to
91 subsection (b) of this section to the extent it deems necessary,
92 including, but not limited to, in the case of a proposed transfer of
93 ownership or control, [prior to initial licensure] the financial viability
94 of the applicant, the impact on the facility rate, any real property lease
95 or debt instrument, any nursing facility management services
96 agreement and the financial condition of the applicant, the financial
97 responsibility and business interests of the transferee and the ability of
98 the facility to continue to provide needed services, or in the case of the
99 addition or expansion of a function or service, ascertaining the
100 availability of the function or service at other facilities within the area
101 to be served, the need for the service or function within the area and
102 any other factors the department deems relevant to a determination of
103 whether the facility is justified in adding or expanding the function or
104 service. The commissioner shall grant, modify or deny the request
105 within ninety days of receipt thereof, except as otherwise provided in
106 this section. Upon the request of the applicant, the review period may
107 be extended for an additional fifteen days if the department has
108 requested additional information subsequent to the commencement of
109 the commissioner's review period. The director of the office of
110 certificate of need and rate setting may extend the review period for a
111 maximum of thirty days if the applicant has not filed in a timely
112 manner information deemed necessary by the department. The
113 applicant may request and shall receive a hearing in accordance with

114 section 4-177 if aggrieved by a decision of the commissioner.

115 (f) The Commissioner of Social Services shall not approve any
116 requests for beds in residential facilities for the mentally retarded
117 which are licensed pursuant to section 17a-227 and are certified to
118 participate in the Title XIX Medicaid Program as intermediate care
119 facilities for the mentally retarded, except those beds necessary to
120 implement the residential placement goals of the Department of
121 Developmental Services which are within available appropriations.

122 (g) The Commissioner of Social Services shall adopt regulations, in
123 accordance with chapter 54, to implement the provisions of this
124 section. The commissioner shall implement the standards and
125 procedures of the Office of Health Care Access concerning certificates
126 of need established pursuant to section 19a-643, as appropriate for the
127 purposes of this section, until the time final regulations are adopted in
128 accordance with said chapter 54.

129 Sec. 4. Section 17b-339 of the general statutes is repealed and the
130 following is substituted in lieu thereof (*Effective from passage*):

131 (a) There is established a Nursing Home Financial [Advisory]
132 Oversight Committee to examine the financial solvency of nursing
133 homes on an ongoing basis and to support the Departments of Social
134 Services and Public Health in their mission to provide oversight to the
135 nursing home industry [which promotes] on issues concerning the
136 financial solvency of and quality of care provided by nursing homes.
137 The committee shall consist of: [seven members:] The Commissioner of
138 Social Services, or his designee; the Commissioner of Public Health, or
139 his designee; the Secretary of the Office of Policy and Management, or
140 his designee; the [director of the Office of Fiscal Analysis, or his
141 designee;] Long-Term Care Ombudsman or the ombudsman's
142 designee; and the executive director of the Connecticut Health and
143 Education Facilities Authority, or his designee. [; and one
144 representative of nonprofit nursing homes and one representative of
145 for-profit nursing homes appointed by the Governor] The

146 Commissioner of Social Services and the Commissioner of Public
147 Health shall be the chairpersons of the committee.

148 [(b) The Commissioner of Social Services and the Commissioner of
149 Public Health shall be the chairpersons of the committee. Any vacancy
150 shall be filled by the appointing authority.]

151 [(c)] (b) The committee, upon receipt of a report relative to the
152 financial solvency of and quality of care provided by nursing homes in
153 the state, shall recommend appropriate action [for improving the
154 financial condition of any nursing home that is in financial distress] to
155 the Commissioner of Social Services and the Commissioner of Public
156 Health. The Commissioner of Social Services shall notify the committee
157 of any nursing home request for an interim rate increase pursuant to
158 section 17b-340.

159 [(d)] (c) Not later than January 1, [1999] 2010, and annually
160 thereafter, the committee shall submit a report on its activities to the
161 joint standing committees of the General Assembly having cognizance
162 of matters relating to appropriations and the budgets of state agencies,
163 human services and public health and to the select committee of the
164 General Assembly having cognizance of matters relating to aging, in
165 accordance with the provisions of section 11-4a.

166 (d) Not later than October 1, 2009, and quarterly thereafter, the
167 committee shall meet with the chairpersons and ranking members of
168 the joint standing committees of the General Assembly having
169 cognizance of matters relating to appropriations and the budgets of
170 state agencies, human services and public health, to discuss activities
171 of the committee relating to the financial solvency of and quality of
172 care provided by nursing homes.

173 Sec. 5. (NEW) (*Effective from passage*) (a) The Commissioner of Social
174 Services may require each owner of a chronic and convalescent
175 nursing home or rest home with nursing supervision to submit to the
176 Department of Social Services quarterly reports of accounts payable by

177 vendor and by days outstanding in such format as may be prescribed
178 by the commissioner. In addition, on and after July 1, 2009, each
179 chronic and convalescent nursing home or rest home with nursing
180 supervision shall obtain an annual financial audit of its operations
181 conducted by an independent auditor, and shall provide a copy of
182 such audit report to the commissioner. If such report indicates that a
183 facility may be experiencing financial distress, the commissioner shall
184 require such facility to submit specific financial information to the
185 department, including, but not limited to, debt agreements and interim
186 financial statements.

187 (b) The commissioner may also require: (1) Any nursing facility
188 management services certificate holder, pursuant to section 19a-561 of
189 the general statutes, as amended by this act, or any person or entity
190 that has a beneficial ownership interest of ten per cent or more in any
191 such nursing facility management services certificate holder to report
192 information concerning the financial condition of any facility managed
193 or owned by such holder or beneficial owner in this state or another
194 state, and (2) any person or entity that has a beneficial ownership
195 interest of ten per cent or more in a chronic and convalescent nursing
196 home or rest home with nursing supervision to report information
197 concerning the financial condition of any facility owned by such
198 person or entity in this state or another state, in such format as may
199 prescribed by the commissioner. For purposes of this subsection,
200 "beneficial ownership" includes, but is not limited to, ownership
201 through any level or relationship of parent and subsidiary
202 corporations and partnerships.

203 (c) If the Commissioner of Social Services determines that a chronic
204 and convalescent nursing home or rest home with nursing supervision
205 has undergone an adverse change in financial condition, based on a
206 review of the information provided to the commissioner pursuant to
207 subsections (a) and (b) of this section and a review of a chronic and
208 convalescent nursing home's or rest home with nursing supervision's
209 annual cost report submitted to the Department of Social Services

210 pursuant to section 17b-340 of the general statutes, the commissioner
211 shall notify the Commissioner of Public Health and the Nursing Home
212 Financial Oversight Committee, established pursuant to section 17b-
213 339 of the general statutes, as amended by this act, of such adverse
214 change in financial condition and may require such facility to report
215 monthly the department on the facility's cash availability, status of
216 vendor payments and employee payrolls. The Commissioner of Social
217 Services may also require the facility to report such other financial
218 information that the commissioner deems necessary to measure the
219 financial condition of such facility.

220 (d) The criteria used by the Commissioner of Social Services
221 pursuant to subsection (c) of this section to determine whether a
222 chronic and convalescent nursing home or rest home with nursing
223 supervision has undergone an adverse change in financial condition
224 shall include, but not be limited to: (1) The frequency of Medicaid
225 advances granted in accordance with section 119 of public act 07-1 of
226 the June special session; (2) unfavorable working capital ratios of assets
227 to liabilities; (3) a high proportion of accounts receivable more than
228 ninety days old; (4) a high proportion of accounts payable more than
229 ninety days old; (5) significant increases in accounts payable, unpaid
230 state or municipal taxes, state user fees or payroll-related costs; (6)
231 minimal equity or reserves or decreasing equity or reserves; (7) high
232 levels of debt and high borrowing costs; (8) significant increases in the
233 level of debts and borrowing costs; and (9) significant operating losses
234 for two or more consecutive years.

235 (e) If the Commissioner of Social Services determines that a chronic
236 and convalescent nursing home or rest home with nursing supervision
237 is in financial distress that may lead to the facility having insufficient
238 resources to meet its operating costs, the commissioner, in accordance
239 with section 11-4a of the general statutes, shall issue a report of such
240 findings to the joint standing committees of the General Assembly
241 having cognizance of matters relating to human services, public health,
242 and appropriations and the budgets of state agencies, and to the

243 Nursing Home Financial Oversight Committee, established pursuant
244 to section 17b-339 of the general statutes, as amended by this act. Such
245 report shall be in a format prescribed by the Nursing Home Financial
246 Oversight Committee.

247 Sec. 6. (NEW) (*Effective from passage*) (a) Each nursing facility
248 management services certificate holder, pursuant to section 19a-561 of
249 the general statutes, as amended by this act, for which rates paid by
250 the state are set pursuant to section 17b-340 of the general statutes,
251 shall, upon request by the Commissioner of Social Services, report its
252 annual costs to the commissioner in such form as may be prescribed by
253 the commissioner. Costs shall be reported on a fiscal year basis ending
254 on the thirtieth day of September and submitted on or before the
255 thirty-first day of December.

256 (b) No nursing facility management services certificate holder, who
257 is a related party to the owner of a chronic and convalescent nursing
258 home or rest home with nursing supervision, shall be paid fees,
259 including expenses from such facility for which it provides such
260 services, in excess of the management fee permitted by the Department
261 of Social Services in setting the rate for such facility pursuant to section
262 17b-340 of the general statutes unless the Commissioner of Social
263 Services, after a financial review of such holder, approves a
264 management fee in excess of such rate. For any violation of this
265 subsection, the Commissioner of Social Services may assess a civil
266 penalty not to exceed the amount by which the fee paid for such
267 services exceeds the approved management fee plus fifteen thousand
268 dollars. The provisions of this subsection shall not apply to any
269 management fee in effect on or before April 1, 2008. As used in this
270 section, "related party" means persons or organizations related
271 through an ability to control, ownership, family relationship or
272 business association, and includes persons related through marriage.

273 Sec. 7. Section 17b-4 of the general statutes is repealed and the
274 following is substituted in lieu thereof (*Effective from passage*):

275 (a) The Department of Social Services shall plan, develop,
276 administer, operate, evaluate and provide funding for services for
277 individuals and families who are served by the department [who] and
278 are in need of personal or economic development. In cooperation with
279 other social service agencies and organizations, including community-
280 based agencies, the department shall work to develop and fund
281 prevention, intervention and treatment services for such individuals
282 and families. The department shall: (1) Provide appropriate services to
283 individuals and families as needed through direct social work services
284 rendered by the department and contracted services from community-
285 based organizations funded by the department; (2) collect, interpret
286 and publish statistics relating to individuals and families serviced by
287 the department; (3) monitor, evaluate and review any program or
288 service which is developed, operated or funded by the department; (4)
289 supervise the establishment of pilot programs funded by the
290 department in local communities which assist and support individuals
291 and families in personal and economic development; (5) improve the
292 quality of services provided, operated and funded by the department
293 and increase the competency of its staff relative to the provision of
294 effective social services by establishing and supporting ongoing staff
295 development and training; and (6) encourage citizen participation in
296 the development of social service priorities and programs.

297 (b) The Department of Social Services shall study continuously the
298 conditions and needs of elderly and aging persons in this state in
299 relation to nutrition, transportation, home-care, housing, income,
300 employment, health, recreation and other matters. It shall be
301 responsible in cooperation with federal, state, local and area planning
302 agencies on aging for the overall planning, development and
303 administration of a comprehensive and integrated social service
304 delivery system for elderly persons and the aged. The department
305 shall: (1) Measure the need for services; (2) survey methods of
306 administration of programs for service delivery; (3) provide for
307 periodic evaluations of social services; (4) maintain technical,
308 information, consultation and referral services in cooperation with

309 other state agencies to local and area public and private agencies to the
310 fullest extent possible; (5) develop and coordinate educational
311 outreach programs for the purposes of informing the public and
312 elderly persons of available programs; (6) cooperate in the
313 development of performance standards for licensing of residential and
314 medical facilities with appropriate state agencies; (7) supervise the
315 establishment, in selected areas and local communities of the state, of
316 pilot programs for elderly persons; (8) coordinate with the Department
317 of Transportation to provide adequate transportation services related
318 to the needs of elderly persons; and (9) cooperate with other state
319 agencies to provide adequate and alternate housing for elderly
320 persons, including congregate housing, as defined in section 8-119e.

321 [(c) The Department of Social Services, in conjunction with the
322 Department of Public Health, may adopt regulations in accordance
323 with the provisions of chapter 54 to establish requirements with
324 respect to the submission of reports concerning financial solvency and
325 quality of care by nursing homes for the purpose of determining the
326 financial viability of such homes, identifying homes that appear to be
327 experiencing financial distress and examining the underlying reasons
328 for such distress. Such reports shall be submitted to the Nursing Home
329 Financial Advisory Committee established under section 17b-339.]

330 Sec. 8. (NEW) (*Effective from passage*) (a) The Commissioner of Social
331 Services, in consultation with the Banking Commissioner and the
332 executive director of the Connecticut Health and Educational Facilities
333 Authority created pursuant to section 10a-179 of the general statutes,
334 shall establish reasonable rates of indebtedness and reasonable real
335 property lease payments for chronic and convalescent nursing homes
336 and rest homes with nursing supervision. No chronic and convalescent
337 nursing home or rest home with nursing supervision licensed in this
338 state, or any owner of the property on which such facility is located
339 who is a related party to the owner of any such facility, shall increase
340 their indebtedness beyond the amount established pursuant to this
341 section or increase their real property lease payments unless such

342 increases are approved by the Commissioner of Social Services. A
343 chronic and convalescent nursing home or rest home with nursing
344 supervision, or any owner of the property on which such facility is
345 located who is a related party to the owner of such facility, may submit
346 a request pursuant to this section for such increase in such manner as
347 may be prescribed by the commissioner. The commissioner may
348 request such information as the commissioner deems necessary to
349 evaluate the request and shall approve, deny or modify the request not
350 later than sixty days after submission of any such requested
351 information. The commissioner may approve or modify a request
352 made in accordance with the provisions of this subsection only if the
353 commissioner determines that such increase will not materially affect
354 the financial viability of the facility or the quality of patient care. The
355 provisions of this section shall not apply to any indebtedness or lease
356 entered into by a chronic and convalescent nursing home or rest home
357 with nursing supervision on or before June 30, 2009. As used in this
358 subsection "related party" means persons or organizations related
359 through an ability to control, ownership, family relationship or
360 business association, and includes persons related through marriage.

361 (b) The proceeds of any loan in which a chronic and convalescent
362 nursing home or rest home with nursing supervision has pledged,
363 granted a lien or otherwise encumbered the assets of such facility shall
364 be used solely for the purpose of operating such nursing home facility
365 or providing improvements to the nursing home facility, unless such
366 facility receives prior approval from the Department of Social Services
367 to use such proceeds for other purposes related to such facility.

368 (c) Any violation of subsections (a) and (b) of this section shall
369 constitute a substantial failure to comply with the requirements
370 established under chapter 368v of the general statutes for purposes of
371 disciplinary action pursuant to section 19a-494 of the general statutes.
372 In addition to any action by the Commissioner of Public Health under
373 said section, the Commissioner of Social Services may impose a civil
374 penalty not exceeding twenty-five thousand dollars for each violation

375 and may refer the findings of the Department of Social Services to the
376 Commissioner of Public Health for appropriate action.

377 Sec. 9. (NEW) (*Effective July 1, 2009*) Each owner of a chronic and
378 convalescent nursing home or rest home with nursing supervision
379 shall submit annually to the Department of Social Services, along with
380 such facility's annual cost report, proof of the facility's insurance
381 liability coverage for negligence or medical malpractice, and damages
382 to property, and the amounts of such coverage in a form prescribed by
383 the Commissioner of Social Services. On or before January 1, 2010, and
384 annually thereafter, the department shall report, in accordance with
385 section 11-4a of the general statutes, information concerning the
386 insurance liability coverage of such facilities to the joint standing
387 committee of the General Assembly having cognizance of matters
388 relating to human services.

389 Sec. 10. Subsection (b) of section 19a-491 of the general statutes is
390 repealed and the following is substituted in lieu thereof (*Effective July*
391 *1, 2009*):

392 (b) If any person acting individually or jointly with any other person
393 [shall own] owns real property or any improvements thereon, upon or
394 within which an institution, as defined in subsection (c) of section 19a-
395 490, is established, conducted, operated or maintained and is not the
396 licensee of the institution, such person shall submit a copy of the lease
397 agreement to the department at the time of any change of ownership
398 and with each license renewal application. The lease agreement shall,
399 at a minimum, identify the person or entity responsible for the
400 maintenance and repair of all buildings and structures within which
401 such an institution is established, conducted or operated. If a violation
402 is found as a result of an inspection or investigation, the commissioner
403 may require the owner to sign a consent order providing assurances
404 that repairs or improvements necessary for compliance with the
405 provisions of the Public Health Code shall be completed within a
406 specified period of time or may, in accordance with the provisions of

407 section 19a-494, assess a civil penalty of not more than one thousand
408 dollars for each day that such owner is in violation of the Public Health
409 Code or a consent order. A consent order may include a provision for
410 the establishment of a temporary manager of such real property who
411 has the authority to complete any repairs or improvements required by
412 such order. Upon request of the Commissioner of Public Health, the
413 Attorney General may petition the Superior Court for such equitable
414 and injunctive relief as such court deems appropriate to ensure
415 compliance with the provisions of a consent order. The provisions of
416 this subsection shall not apply to any property or improvements
417 owned by a person licensed in accordance with the provisions of
418 subsection (a) of this section to establish, conduct, operate or maintain
419 an institution on or within such property or improvements.

420 Sec. 11. Subdivision (2) of subsection (b) of section 19a-493 of the
421 general statutes is repealed and the following is substituted in lieu
422 thereof (*Effective July 1, 2009*):

423 (2) Any change in the ownership of a facility or institution, as
424 defined in subsection (c) of section 19a-490, owned by an individual,
425 partnership or association or the change in ownership or beneficial
426 ownership of ten per cent or more of the stock of a corporation which
427 owns, conducts, operates or maintains such facility or institution, shall
428 be subject to prior approval of the department after a scheduled
429 inspection of such facility or institution is conducted by the
430 department, provided such approval shall be conditioned upon a
431 showing by such facility or institution to the commissioner that it has
432 complied with all requirements of this chapter, the regulations relating
433 to licensure and all applicable requirements of the Public Health Code.
434 Any such change in ownership or beneficial ownership resulting in a
435 transfer to a person related by blood or marriage to such an owner or
436 beneficial owner shall not be subject to prior approval of the
437 department unless: (A) Ownership or beneficial ownership of ten per
438 cent or more of the stock of a corporation, partnership or association
439 which owns, conducts, operates or maintains more than one facility or

440 institution is transferred; (B) ownership or beneficial ownership is
441 transferred in more than one facility or institution; or (C) the facility or
442 institution is the subject of a pending complaint, investigation or
443 licensure action. If the facility or institution is not in compliance, the
444 commissioner may require the new owner to sign a consent order
445 providing reasonable assurances that the violations shall be corrected
446 within a specified period of time. Notice of any such proposed change
447 of ownership shall be given to the department at least ninety days
448 prior to the effective date of such proposed change. For the purposes of
449 this subdivision, "a person related by blood or marriage" means a
450 parent, spouse, child, brother, sister, aunt, uncle, niece or nephew. For
451 the purposes of this subdivision, a change in the legal form of the
452 ownership entity, including, but not limited to, changes from a
453 corporation to a limited liability company, a partnership to a limited
454 liability partnership, a sole proprietorship to a corporation and similar
455 changes, shall not be considered a change of ownership if the
456 beneficial ownership remains unchanged and the owner provides such
457 information regarding the change to the department as may be
458 required by the department in order to properly identify the current
459 status of ownership and beneficial ownership of the facility or
460 institution. For the purposes of this subdivision, a public offering of
461 the stock of any corporation that owns, conducts, operates or
462 maintains any such facility or institution shall not be considered a
463 change in ownership or beneficial ownership of such facility or
464 institution if the licensee and the officers and directors of such
465 corporation remain unchanged, such public offering cannot result in
466 an individual or entity owning ten per cent or more of the stock of
467 such corporation, and the owner provides such information to the
468 department as may be required by the department in order to properly
469 identify the current status of ownership and beneficial ownership of
470 the facility or institution. For purposes of this subdivision, beneficial
471 ownership includes, but is not limited to, ownership through any level
472 or relationship of parent and subsidiary corporations and partnerships.
473 To the extent required by this subdivision, the licensee of such facility

474 or institution shall provide to the department the identities of, and any
475 other information required by the department regarding, the
476 individual shareholders, partners or members that have a beneficial
477 ownership interest in the facility or institution, as defined in subsection
478 (a) of section 19a-490.

479 Sec. 12. Section 19a-498 of the general statutes is repealed and the
480 following is substituted in lieu thereof (*Effective from passage*):

481 (a) Subject to the provisions of section 19a-493, as amended by this
482 act, the Department of Public Health shall make or cause to be made a
483 biennial licensure inspection of all institutions and such other
484 inspections and investigations of institutions and examination of their
485 records as the department deems necessary.

486 (b) The commissioner, or an agent authorized by the commissioner
487 to conduct any inquiry, investigation or hearing under the provisions
488 of this chapter, shall have power to inspect the premises of an
489 institution, issue subpoenas, order the production of books, records or
490 documents, administer oaths and take testimony under oath relative to
491 the matter of such inquiry, [or] investigation, or hearing. At any
492 hearing ordered by the department, the commissioner or such agent
493 may subpoena witnesses and require the production of records, papers
494 and documents pertinent to such inquiry. If any person disobeys such
495 subpoena or, having appeared in obedience thereto, refuses to answer
496 any pertinent question put to such person by the commissioner or such
497 agent or to produce any records and papers pursuant to the subpoena,
498 the commissioner or such agent may apply to the superior court for the
499 judicial district of Hartford or for the judicial district wherein the
500 person resides or wherein the business has been conducted, setting
501 forth such disobedience or refusal, and said court shall cite such
502 person to appear before said court to answer such question or to
503 produce such records and papers.

504 (c) The Department of Mental Health and Addiction Services, with
505 respect to any mental health facility or alcohol or drug treatment

506 facility, shall be authorized, either upon the request of the
507 Commissioner of Public Health or at such other times as they deem
508 necessary, to enter such facility for the purpose of inspecting programs
509 conducted at such facility. A written report of the findings of any such
510 inspection shall be forwarded to the Commissioner of Public Health
511 and a copy shall be maintained in such facility's licensure file.

512 (d) In addition, the Commissioner of Social Services, or a designated
513 representative of the Commissioner of Social Services, at the request of
514 the Office of Health Care Access or the Nursing Home Finance
515 Oversight Committee, established pursuant to section 17b-339, as
516 amended by this act, or when the Commissioner of Social Services
517 deems it necessary, may examine and audit the financial records of any
518 nursing home facility, as defined in section 19a-521, or any nursing
519 facility management services certificate holder, as defined in section
520 19a-561, as amended by this act. Each such nursing home facility or
521 nursing facility management services shall retain all financial
522 information, data and records relating to the operation of the nursing
523 home facility for a period of not less than ten years, and all financial
524 information, data and records relating to any real estate transactions
525 affecting such operation, for a period of not less than twenty-five
526 years, which financial information, data and records shall be made
527 available, upon request, to the Commissioner of Social Services or such
528 designated representative at all reasonable times. In connection with
529 any inquiry, examination or investigation, the commissioner or the
530 commissioner's authorized agent may issue subpoenas, order the
531 production of books, records and documents, administer oaths and
532 take testimony under oath. The Attorney General, upon request of said
533 commissioner or the authorized agent of the commissioner, may apply
534 to the Superior Court to enforce any such subpoena or order.

535 Sec. 13. Section 19a-503 of the general statutes is repealed and the
536 following is substituted in lieu thereof (*Effective July 1, 2009*):

537 Notwithstanding the existence or pursuit of any other remedy, the

538 Department of Public Health may, in the manner provided by law and
539 upon the advice of the Attorney General, conduct an investigation and
540 maintain an action in the name of the state for injunction or other
541 process against any person or governmental unit to restrain or prevent
542 the establishment, conduct, management or operation of an institution
543 or nursing facility management services, without a license or certificate
544 under this chapter.

545 Sec. 14. Section 19a-528a of the general statutes is repealed and the
546 following is substituted in lieu thereof (*Effective July 1, 2009*):

547 For any application of licensure for the acquisition of a nursing
548 home filed after July 1, 2004, any potential nursing home licensee or
549 owner must submit in writing, a change in ownership application with
550 respect to the facility for which the change in ownership is sought.
551 Such application shall include such information as the Commissioner
552 of Public Health deems necessary and whether such potential nursing
553 home licensee or owner (1) has had civil penalties imposed through
554 final order of the commissioner in accordance with the provisions of
555 sections 19a-524 to 19a-528, inclusive, or civil penalties imposed
556 pursuant to the statutes or regulations of another state, during [a] the
557 two-year period preceding the application, (2) has had in any state
558 [intermediate] sanctions, other than civil penalties of less than ten
559 thousand dollars, imposed through final adjudication under the
560 Medicare or Medicaid program pursuant to Title XVIII or XIX of the
561 federal Social Security Act, 42 USC 301, as from time to time amended,
562 or (3) has had in any state such potential licensee's or owner's
563 Medicare or Medicaid provider agreement terminated or not renewed.
564 [.] The commissioner shall not approve such application to acquire
565 another nursing home in this state for a period of five years from the
566 date of final order on such civil penalties, final adjudication of such
567 [intermediate] sanctions, or termination or nonrenewal, except for
568 good cause shown. Notwithstanding, the provisions of this section, the
569 Commissioner of Public Health, may for good cause shown, permit a
570 potential nursing home licensee or owner to acquire another nursing

571 home prior to the expiration of said five-year period.

572 Sec. 15. Section 19a-543 of the general statutes is repealed and the
573 following is substituted in lieu thereof (*Effective July 1, 2009*):

574 (a) As used in this section, (1) "severe financial distress" includes,
575 but is not limited to: (A) Allowing more than thirty-five per cent of the
576 facility's vendor accounts to be overdue for payment by more than one
577 hundred twenty days; (B) allowing the facility payment of required
578 employee pension or health insurance contributions to be overdue by
579 more than sixty days; (C) maintaining an unfavorable working capital
580 ratio of assets to liabilities for more than one fiscal year; (D)
581 maintaining minimal equity or reserves for more than one fiscal year;
582 (E) incurring significant operating losses for more than one fiscal year;
583 or (F) any other criteria defined by the Commissioner of Social Services
584 in regulations adopted pursuant to the provisions of chapter 54; and
585 (2) "related party" means persons or organizations related through an
586 ability to control, ownership, family relationship or business
587 association, and includes persons related through marriage.

588 (b) The court shall grant an application for the appointment of a
589 receiver for a nursing home facility upon a finding of any of the
590 following: (1) Such facility is operating without a license issued
591 pursuant to this chapter or such facility's license has been suspended
592 or revoked pursuant to section 19a-494; (2) such facility intends to
593 close and adequate arrangements for relocation of its residents have
594 not been made at least thirty days prior to closing; (3) such facility has
595 sustained a serious financial loss or failure which jeopardizes the
596 health, safety and welfare of the patients or there is a reasonable
597 likelihood of such loss or failure; [or] (4) there exists in such facility a
598 condition in substantial violation of the Public Health Code, or any
599 other applicable state statutes, or Title XVIII or XIX of the federal Social
600 Security Act, 42 USC 301, as amended, or any regulation adopted
601 pursuant to such state or federal laws; or (5) such facility is in severe
602 financial distress.

603 (c) The court, upon a determination pursuant to subsection (b) of
604 this section that a receiver is appropriate, may, in addition to
605 appointing a receiver for the nursing home facility, appoint a receiver
606 for: (1) Any person or entity providing nursing facility management
607 services, as defined in section 19a-561, as amended by this act, for such
608 facility; (2) any owner of real property, or improvements thereon, on
609 which such nursing home facility is located; or (3) any legal entity
610 owned or managed by a related party to the nursing home facility
611 owners providing goods or services to such facility. The court may
612 issue such orders as deemed necessary to any person that controls or
613 possesses assets necessary for the receiver to fulfill the duties as set
614 forth in section 19a-545.

615 (d) The commissioner, pursuant to section 17b-10, may implement
616 policies and procedures to administer the provisions of this section
617 while in the process of adopting such policies and procedures as
618 regulation, provided the commissioner prints notice of the intent to
619 adopt the regulations in the Connecticut Law Journal not later than
620 twenty days after the date of implementation. Such policies and
621 procedures shall be valid until the time final regulations are adopted.

622 Sec. 16. Subsection (b) of section 19a-546 of the general statutes is
623 repealed and the following is substituted in lieu thereof (*Effective from*
624 *passage*):

625 (b) If the receiver is in possession of real estate or goods subject to a
626 lease, mortgage or security interest [which] that the receiver is
627 permitted to avoid under subsection (a) of this section and if the real
628 estate or goods are necessary for the continued operation of the facility
629 under this section, the receiver may apply to the court to set a
630 reasonable rental, price or rate of interest to be paid by the receiver
631 during the duration of the receivership. No allowance for such
632 property costs set by the court shall exceed the fair rental value
633 allowance determined in accordance with the regulations adopted
634 pursuant to section 17b-238. The court shall hold a hearing not later

635 than fifteen days after application is made. Any known owners of the
636 property involved shall receive notice of such application from the
637 receiver at least ten days prior to the hearing. Payment by the receiver
638 of the amount determined by the court to be reasonable is a defense to
639 any action against the receiver for payment or for possession of the
640 goods or real estate subject to the lease, security interest or mortgage
641 involved by any person who received such notice, but the payment
642 does not relieve the owner of the facility of any liability for the
643 difference between the amount paid by the receiver and the amount
644 due under such lease, security interest or mortgage involved.

645 Sec. 17. Section 19a-547 of the general statutes is repealed and the
646 following is substituted in lieu thereof (*Effective July 1, 2009*):

647 (a) The court may appoint any responsible individual whose name
648 is proposed by the Commissioner of Public Health and the
649 Commissioner of Social Services to act as a receiver. Such individual
650 shall be a nursing home administrator licensed in the state of
651 Connecticut with substantial experience in operating Connecticut
652 nursing homes or shall possess such other experience and education
653 that the court deems satisfactory to appropriately and professionally
654 implement such receivership. On or before July 1, 2004, the
655 Commissioner of Social Services shall adopt regulations governing
656 qualifications for proposed receivers consistent with this subsection.
657 No state employee or owner, administrator or other person with a
658 financial interest in the facility may serve as a receiver for that facility.
659 No person appointed to act as a receiver shall be permitted to have a
660 current financial interest in the facility; nor shall such person
661 appointed as a receiver be permitted to have a financial interest in the
662 facility for a period of five years from the date the receivership ceases.

663 (b) The court may remove such receiver in accordance with section
664 52-513. A nursing home receiver appointed pursuant to this section
665 shall be entitled to a reasonable receiver's fee as determined by the
666 court. The receiver shall be liable only in his official capacity for injury

667 to person and property by reason of the conditions of the nursing
668 home. He shall not be personally liable, except for acts or omissions
669 constituting gross, wilful or wanton negligence.

670 (c) The court, in its discretion, may require a bond of such receiver
671 in accordance with section 52-506.

672 (d) The court may require the Commissioner of [Public Health]
673 Social Services to provide for the payment of any receiver's fees
674 authorized in subsection (a) of this section upon a showing by such
675 receiver to the satisfaction of the court that (1) the assets of the nursing
676 home facility are not sufficient to make such payment, and (2) no other
677 source of payment is available, including the submission of claims in a
678 bankruptcy proceeding. The state shall have a claim for any court-
679 ordered fees and expenses of the receiver and any state advance
680 payments to the nursing home facility after a receiver has been
681 appointed which shall have priority over all other claims of secured
682 and unsecured creditors and other persons whether or not the nursing
683 home facility is in bankruptcy. [, to the extent allowed under state or
684 federal law.]

685 Sec. 18. Section 19a-561 of the general statutes is repealed and the
686 following is substituted in lieu thereof (*Effective from passage*):

687 (a) As used in this section, "nursing facility management services"
688 means services provided in a nursing facility to manage the operations
689 of such facility, including the provision of care and services and
690 "nursing facility management services certificate holder" means a
691 person or entity certified by the Department of Public Health to
692 provide nursing facility management services.

693 (b) On and after January 1, 2007, no person or entity shall provide
694 nursing facility management services in this state without obtaining a
695 certificate from the Department of Public Health.

696 (c) Any person or entity seeking a certificate to provide nursing

697 facility management services shall apply to the department, in writing,
698 on a form prescribed by the department. Such application shall include
699 the following information:

700 (1) (A) The name and business address of the applicant and whether
701 the applicant is an individual, partnership, corporation or other legal
702 entity; (B) the names of the officers, directors, trustees or managing
703 and general partners of the applicant, the names of the persons having
704 a ten per cent or greater beneficial ownership interest in the applicant,
705 and a description of each such person's relationship to the applicant;
706 (C) if the applicant is a corporation incorporated in another state, a
707 certificate of good standing from the state agency with jurisdiction
708 over corporations in such state; and (D) a certificate of good standing
709 from the licensing agency with jurisdiction over public health for each
710 state in which the applicant currently provides nursing facility
711 management services;

712 (2) A description of the applicant's nursing facility management
713 experience;

714 (3) An affidavit signed by the applicant and any of the persons
715 described in subdivision (1) of this subsection disclosing any matter in
716 which the applicant or such person (A) has been convicted of an
717 offense classified as a felony under section 53a-25 or pleaded nolo
718 contendere to a felony charge, or (B) has been held liable or enjoined in
719 a civil action by final judgment, if the felony or civil action involved
720 fraud, embezzlement, fraudulent conversion or misappropriation of
721 property, or (C) is subject to a currently effective injunction or
722 restrictive or remedial order of a court of record at the time of
723 application, or (D) within the past five years has had any state or
724 federal license or permit suspended or revoked as a result of an action
725 brought by a governmental agency or department, arising out of or
726 relating to business activity or health care, including, but not limited
727 to, actions affecting the operation of a nursing facility, residential care
728 home or any facility subject to sections 17b-520 to 17b-535, inclusive, or

729 a similar statute in another state or country; and

730 (4) The location and description of any nursing facility in this state
731 or another state in which the applicant currently provides
732 management services or has provided such services within the past
733 five years.

734 (d) In addition to the information provided pursuant to subsection
735 (c) of this section, the department may reasonably request to review
736 the applicant's audited and certified financial statements, which shall
737 remain the property of the applicant when used for either initial or
738 renewal certification under this section.

739 (e) Each application for a certificate to provide nursing facility
740 management services shall be accompanied by an application fee of
741 three hundred dollars. The certificate shall list each location at which
742 nursing facility management services may be provided by the holder
743 of the certificate.

744 (f) The department shall base its decision on whether to issue or
745 renew a certificate on the information presented to the department and
746 on the compliance status of the managed entities. The department may
747 deny certification to any applicant for the provision of nursing facility
748 management services at any specific facility or facilities where there
749 has been a substantial failure to comply with the Public Health Code,
750 or failure to provide the information required under subparagraph (D)
751 of subdivision (1) of subsection (c) of this section.

752 (g) Renewal applications shall be made biennially after (1)
753 submission of the information required by subsection (c) of this section
754 and any other information required by the department pursuant to
755 subsection (d) of this section, and (2) submission of evidence
756 satisfactory to the department that any nursing facility at which the
757 applicant provides nursing facility management services is in
758 substantial compliance with the provisions of this chapter, the Public
759 Health Code and licensing regulations, and (3) payment of a three-

760 hundred-dollar fee.

761 (h) In any case in which the Commissioner of Public Health finds
762 that there has been a substantial failure to comply with the
763 requirements established under this section, or if the department
764 receives information from a licensing agency with jurisdiction over
765 public health in another state that the holder is not in good standing in
766 such state, the commissioner may initiate disciplinary action against a
767 nursing facility management services certificate holder pursuant to
768 section 19a-494. In addition to the remedies provided under section
769 19a-494, the commissioner may also assess such certificate holder a
770 civil penalty not to exceed fifteen thousand dollars per violation for
771 any class A or class B violation, as defined in section 19a-527, that
772 occur at a nursing facility for which such holder provides nursing
773 facility management services. Failure to pay such penalties shall be
774 subject to the remedies provided in section 19a-526.

775 (i) The department may limit or restrict the provision of
776 management services by any nursing facility management services
777 certificate holder against whom disciplinary action has been initiated
778 under subsection (h) of this section.

779 (j) The department, in implementing the provisions of this section,
780 may conduct any inquiry or investigation, in accordance with the
781 provisions of section 19a-498, as amended by this act, regarding an
782 applicant or certificate holder.

783 (k) Any person or entity providing nursing facility management
784 services without the certificate required under this section shall be
785 subject to a civil penalty of not more than one thousand dollars for
786 each day that the services are provided without such certificate.

787 Sec. 19. Section 19a-544 of the general statutes is repealed and the
788 following is substituted in lieu thereof (*Effective July 1, 2009*):

789 It shall be a sufficient defense to a receivership application if any

owner of a nursing home facility establishes that, (1) [he] such owner did not have knowledge or could not reasonably have known that any conditions in violation of section 19a-543, as amended by this act, existed, or (2) [he] such owner did not have a reasonable time in which to correct such violations, or (3) the violations listed in the application do not, in fact, exist or, in the event the grounds upon which the petition is based are those set forth in subdivision (2) of subsection (b) of section 19a-543, as amended by this act, the facility does not intend to close.

Sec. 20. Section 19a-549 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2009*):

The Superior Court, upon a motion by the receiver or the owner of such facility, may terminate the receivership if it finds that such facility has been rehabilitated so that the violations complained of no longer exist or if such receivership was instituted pursuant to subdivision (2) of subsection (b) of section 19a-543, as amended by this act, the orderly transfer of the patients has been completed and such facility is ready to be closed. Upon such finding, the court may terminate the receivership and return such facility to its owner. In its termination order the court may include such terms as it deems necessary to prevent the conditions complained of from recurring.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	New section
Sec. 2	<i>July 1, 2009</i>	17b-351
Sec. 3	<i>from passage</i>	17b-352
Sec. 4	<i>from passage</i>	17b-339
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>from passage</i>	17b-4
Sec. 8	<i>from passage</i>	New section
Sec. 9	<i>July 1, 2009</i>	New section
Sec. 10	<i>July 1, 2009</i>	19a-491(b)

Sec. 11	<i>July 1, 2009</i>	19a-493(b)(2)
Sec. 12	<i>from passage</i>	19a-498
Sec. 13	<i>July 1, 2009</i>	19a-503
Sec. 14	<i>July 1, 2009</i>	19a-528a
Sec. 15	<i>July 1, 2009</i>	19a-543
Sec. 16	<i>from passage</i>	19a-546(b)
Sec. 17	<i>July 1, 2009</i>	19a-547
Sec. 18	<i>from passage</i>	19a-561
Sec. 19	<i>July 1, 2009</i>	19a-544
Sec. 20	<i>July 1, 2009</i>	19a-549

Statement of Purpose:

To implement the Governor's budget recommendations.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]